IN THE HIGH COURT OF UTTAARAKHAND AT NAINITAL

(Chapter VIII, Rule 32(2)(b)

Description of Case

Criminal Appeal No. 1164 of 2001
(Old No. 156 of 1991)

Date of decision : 17th May, 2007

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date : 17.05.2007 Initials of Judge

Note : Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Criminal, Appeal No. 1164 of 2001
(Old no. 156 of 1991)

1. Pooran S/o Haswa
2. Sahoo S/o Haswa
3. Jyoti S/o Pooran
4. Dharam Raj S/o Pooran
   All R/o Village Pahasoo,
   Police Station Rampur
   District Saharanpur ...Appellants

Versus

State ... Respondent

Mr. S.K. Agrawal, Sr. Advocate with Mr. Sandeep Tandon, Advocate for the appellants
Mr. G.S. Sandhu, learned Govt. Advocate for the respondent-State.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J. C. S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. This appeal, preferred under section 374 (2) of Code of Criminal Procedure, 1973 (for brevity hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 28.01.1991, passed by learned Additional Sessions Judge, Roorkee, District Haridwar in Sessions Trial No. 411 of 1985, whereby the appellants have been convicted & sentenced to undergo imprisonment for life and seven years' R.I. u/s 302 Indian Paned Code, 1860 (hereinafter as I.P.C.) and u/s 307/34 I.P.C. respectively.

2. The prosecution story, in brief, is that an F.I.R. Ex.Ka.1 was lodged by the complainant Satish Kumar PW1 at police station Rampur alleging therein that on 26.03.1985, Janeshwar Singh, brother of the complainant Satish Kumar and Raj Sigh were going on their *buggi* to take grass from the field and as soon as they reached near the field of Mela

Ram of their village, accused-appellants Pooran, Sahu, Jyoti and Dharamraj of their village intercepted and stopped the *buggi* and told Janeshwar Singh and Raj Singh that both of you have always been preventing us from collecting grass from the field as such, we would teach you lesson today. The accused-appellants were armed with kharpali, lathi and axe. They assaulted Raj Singh and Janeshwar Singh. Both of them received grievous injuries on their persons. In the meantime, Tahar Singh PW3 and Nakkal Singh who were going towards their fields behind the injured also reached there. Both Tahar Sigh PW3 and Nakkal Singh rescued Raj Singh and Janeshwar Singh. Thereafter, complainant Satish Kumar PW1 took both the injured Raj Singh and Janeshwar Singh to Police Station Rampur wherein the complainant Satish Kumar lodged the written report Ex.Ka.1. On the basis of the report, the Head Moharrir registered the case u/s 323/324 I.P.C. against the accused-appellants. Thereafter both the injured were sent to P.H.C. Rampur for the medical examination. As the condition of Raj Singh was deteriorating, so he was referred to District Hospital Saharanpur. Raj Singh succumbed to his injuries later on. After the death of Raj Singh, the Head Moharrir registered the case u/s 302/323/324 against the accused appellants.

3. S.I. Gurdeep Singh PW6 investigated the matter and visited the place of occurrence. He proved the chick FIR Ex.ka.5, copy of the G.D. Ex.Ka.6 & 7, site plan Ex.ka.9 etc. He prepared panchayatnama Ex.Ka.8 of the dead body of the deceased Raj Singh. Thereafter, he sent the dead body for postmortem at District Hospital Saharanpur on 27.03.1985. The Investigating Officer after completing the necessary

formalities of the investigation submitted the chargesheet Ex.Ka.12 before the court.

4. After submission of chargesheet, the accused-appellants were committed to the court of Sessions for trial and the trial court framed charges u/s 302/34 and 307/34 I.P.C. against the acused-appellants. The appellants-accused denied the charges leveled against them and claimed their trial.

5. The prosecution in support of its case examined Satish Kumar PW1 complainant, He is not an eyewitness of the incident. He is the brother of injured Jansehwar Singh PW2. Janeshwar Singh PW2 is an injured eyewitness. Tahar Singh PW3 is also an eyewitness of the incident. He has also tried to save Janeshwar Singh PW2 and deceased Raj Singh from the accused-appellants at the time of incident. Dr. Jagbir Singh PW4 is the Medical Officer P.H.C. Rampur who had medically examined the injuries of Janeshwar Singh PW2 and the deceased Raj Singh. Dr. J.K. Mittal PW 5 had conducted the post mortem of the dead body of deceased Raj Singh. S.I. Gurdeep Singh PW6 is the Investigating officer who has investigated the matter and submitted the chargesheet. Constable Farrok Ahmad PW7 has written the F.I.R. on the basis of the report of the complainant. The accused-appellants did not adduce any oral and documentary evidence in their defence.

6. The accused-appellants were examined u/s 313 Cr. P.C. and they have pleaded not guilty to the offence. They have stated that they have been falsely implicated in this case.

7. The learned Sessions Judge on appreciation of the evidence held the accused-appellants guilty u/s 302 I.P.C. and u/s 307/34 I.P.C. respectively.

8. We have heard Mr. S.K. Agrawal, Sr. Advocate with Mr. Sandeep Tandon learned counsel for the appellants; Mr. G.S. Sandhu, learned Government Advocate with Mr. M.A. Khan, Brief Holder for the respondent-State and perused the record carefully.

9. At the outset, it need to be mentioned here that it is not disputed that the deceased Raj Singh died on account of the injuries sustained by him on the date of the occurrence. According to the prosecution evidence Raj Singh and Janeshwar were taken to P.H.C. Rampur where they were admitted in the P.H.C. Rampur. Dr. Jagbir Singh PW4, Medical Officer at P.H.C., Rampur, medically examined both the injured. Injured Raj Singh who later on died was examined by Dr. Jagbir Singh PW4 on 26.03.1985 at about 4:10 p.m. and he found the following injuries on the person of Raj Singh :-

> *1. L.W. 4 cm. X 0.7 cm. X 1 cm over the right part of the skull, 7 cm. Above and posteriorly from the right ear, wound is surrounded by a traumatic swelling of 5 cm. X 3 cm. With coagulated blood over the margins of the wound.*
>
> *2. L.W. 0.5 cm. X 5cm x 4 x cm. (total thickness of the wall of right nostril), on the inferior portion of the front aspect of right nostril, the lower end of the wound is across the inferior boarder of the wall of right nostril coagulated blood is present in the wound and around the wound.*
>
> *3. L.W. 3 cm. X 0.7cm. x 0.6 cm on the right part of the right upper lip, transverse in situation, joint below the right nostril, lip is intact by a thin layer on its internal surface with coagulated blood on the wound and around the wound.*

4. Multiple contusions in the area 20 cm. X 15 cm. Over the superior surface of right shoulder and latero posterior and front aspects of right upper arm, there is swelling also on the whole of the upper arm, red in colour.

5. Abraded contusion 10 cm x 2 cm on the inner aspect of the right forearm, the injury is surrounded by a swelling of 15 cm x 5 cm, reddish in colour.

6. Contusion 3 cm x 1 cm on the inner part of the dorsum of the right palm, surrounded by a swelling of 5 cm x 4 cm in red in colour.

7. Multiple contusions in the area of 30 cm x 20 cm on the upper right back, the contusions varying in size and varying in situations, re in colour.

8. Multiple contusions in the area of 20 cm. X 15 cm on the upper part of left back, red in colour.

9. Multiple contusion in the area 15 cm x 15 cm over front, lateral and posterior aspects of the left arm, the whole of the upper arm is swollen, red in colour.

10. L.W. 1.5 cm x 0.5 cm x bone deep on the front of leg, the injury is surrounded by a swelling of 5 cm x 5 cm and the coagulated blood is present on the whole of the front of the leg, the injury is 12 cms. Below the inferior border of left patella bone.

11. L.W. 1 cm x 0.5 cm. X bone deep on the dorsum of 1st toe of right side of the piece of bone is seen through the wound, that of the same toe.

The Doctor, in his evidence has proved the medical certificate and the injuries which were found on the person of the deceased Raj Singh. He has opined in his evidence that the injuries could have been caused by any blunt object like lathi. The duration of the injuries was in between 6 to 12 hours old. He has further opined that the injuries could have been caused at about 12:00 noon on 26.03.1985. It was further opined that injury Nos. 4,5,6,10 & 11 were kept under observation and X-ray was advised for the same. The rest of the injures found on his person were simple. It was also opined that the condition of the injured Raj Singh was precarious, as such, he was referred to Civil Hospital Saharanpur. According to the prosecution evidence when the

deceased was examined by the doctor at civil Hospital Saharanpur, the deceased Raj Singh was found dead.

10. The autopsy on the body of the deceased Raj Singh ws conducted on 27.03.1895 at about 3:45 p.m. by Dr. J.K. Mittal PW5. The following ante mortem injuries were found on the person of the deceased :-

1. *Stitched wound with 3 stitches on removing stitches it is lacerated wound 4 cm x 0.5 cm. x bone deep on Rt. side head 8.0 cm. From Rt ear directed horizontally.*
2. *Multiple contusions in an area of 26 cm. X 11 cm. On Rt. Upper arm on its out and back and Rt. shoulder with traumatic swelling 30 cm. X 14 cm. around it.*
3. *Multiple contusions on whole of back both side of various size in different sizes varies 6 cm. X 2 cm. to 18 cm x 2 cm.*
4. *Contusion in an area of 19 cm. x 7 cm. on Rt. buttock.*
5. *Contusion 10 cm x 5 cm. on middle of Rt. thigh at its back directed horizontally.*
6. *Abrasion 1.0 cm.x0.5 cm. on back of Rt. elbow.*
7. *Traumatic swelling 1.5 cm. x 10 cm. on back of Rt. hand.*
8. *Lacerated wound 1.0cm x 0.5 cm x bone deep with fracture of bone of Rt. middle finger.*
9. *Incised wound 1.0 cm. x 0.5 cm x muscle deep on left leg at its front and upper 1/3rd directed vertically with traumatic swelling in an area of 14 cm. x 10 cm with fracture of Lt. tibia bone.*
10. *Multiple contusion 14 cm z 10 cm. on left upper arm at its outer & back side.*
11. *Abrasion 1.0 cm x 0.75 cm. on Lt. Upper at its middle and out side.*
12. *Multiple abrasions in areas of 9 cm. x 3 cm. of size 1.5 cm. x 1.5 cm.*
13. *Traumatic swelling 8 cm. x 8 cm on back of Lt. hand.*
14. *Contusion 6 cm. x 2 cm. on lt. side of chest at its auxiliary area.*

15. *Stitched wound (2) on removing lacerated wound 2.5cm. x 0.5 cm X muscle deep.*
16. *Lacerated wound 0.5 cm. x 0.25 cm X muscle deep on Rt. ala of nostril.*
17. *Abrasion 0.5 cm. x 0.5 cm. on bridge of nose.*
18. *Contused swelling 11 cm. x 8 cm on rt. side neck at its upper part.*

The doctor has opined that the duration of the death was one day old and the deceased Raj Singh had died due to the head injury sustained by him. The post mortem report of the deceased reveals that the deceased died due to the head injury sustained by him. Perusal of the injuries clearly reveals that some of the injuries were on the vital part of the body of the deceased.

11. It is also not disputed that Janeshwar Singh PW2 sustained injuries on his person on the date of occurrence. Dr. Jagbir Singh PW4 has also examined the injured Janeshwar Singh on 26.03.1985 at 4:35 p.m. and found the following injuries on his person :-

1. *Incised wound 2 cm. x 0.5 cm x bone deep over the posterior aspect of left upper arm, margins are clean cut with coagulated blood in and around the wound. On touching the margins there is oozing of fresh blood. Oblique in situation.*
2. *Contusion 5 cm. x 4 cm. on the back of the left shoulder red in colour.*
3. *Contusion 10 cms x 2 cm. on the lower part of left back oblique in site red in colour.*
4. *L.W. 2 cm. x 2 cm x bone deep on the front on left leg coagulation blood in and around the wound is in the middle 1/3 region of leg.*
5. *L.W. 1 cm x 0.6 cm. on the front of right leg coagulated blood in and around the*

wound 8 cm. below the inferior border of rt. patella.

6. *L.W. 1 cm x 0.5 cm. on the front of right leg coagulated blood in and around the wound 8 cm. below the inj. No. 5.*
7. *L.W. 2 cm x 7 cm on the front of right leg coagulated blood in and around the wound 4 cm. below the inj No. 6.*
8. *L.W.1 cm x 0.3 cm. on the tip of left thumb along the outer border of the nail with coagulated blood in and around the wound, whole of the thumb is swollen in the area 8 cms. X 4 cm.*

The Doctor has opined that injury Nos. 2 to 8 were caused by some blunt object whereas injury No. 1 was caused by sharp object. Injury No. 8 was kept under observation.

12. Now, we have to consider whether the accused-appellants were liable for the offence charged against them. It is also pertinent to mention here that according to the prosecution evidence, the accused-appellants assaulted the deceased Raj Singh and injured Janeshwar Singh PW2 by axe, kharpali and lathi. The accused-appellant Jyoti and sahu were holding axe and kharpali respectively whereas the accused-appellants Pooran and Dharmraj were holding lathies in their hands.

13. The prosecution in support of its case has adduced the evidence of injured Janeshwar Singh PW2 who is an eyewitness of the incident. He has stated in his evidence that on the date of occurrence he was going alongwith the deceased Raj Singh to take grass from their fields. As soon as their *buggi* reached near the field of Mela Ram, the accused-appellants Pooran, Sahu, Jyoti and Dharmraj of their village stopped their *buggi* and told Janeshwar Singh and Raj Singh that both of you have always been preventing them

from collecting grass from the fields as such, we would teach you lesson today. The accused-appellant Jyoti and Sahu were holding axe and kharpali whereas the accused-appellants Pooran and Dharmraj were holding lathies in their hands. The accused-appellants pounced upon them and assaulted the deceased Raj Singh and Janeshwar Singh PW3 who received grievous injuries on their persons. In the meanwhile, Tahar Singh PW3 and Nakkal Singh who were going towards their fields reached there. Both of them rescued the deceased Raj Singh and Janeshwar Singh PW2. Thereafter, Satish Kumar PW1, brother of the deceased Raj Singh took them to the police station and then to P.H.C. Rampur where both were admitted for treatment. The deceased Raj Singh was thereafter referred to District Hospital Saharanpur due to his critical condition.

14. Tahar Singh PW3, an eyewitness has corroborated the evidence of injured eyewitness Janeshwar Singh PW2 with regard to the incident. Tahar Singh PW3, an eyewitness of the incident has stated in his evidence that on the date of incident he was going to his field alongwith Nakkal Singh behind the injured Janeshwar Singh PW2 and the deceased Raj Singh. When the deceased Raj Singh and injured Janeshwar Singh reached near the field of Mela Ram, the accused-appellants assaulted deceased Raj Singh and injured Janeshwar Singh PW2 by axe, kharpali and lathi. Both deceased Raj Singh and injured Janeshwar Singh PW2 sustained grievous injuries on their person. Tahar Singh PW3 has further stated that he has seen the entire incident and he tried to rescue the deceased Raj Singh and injured Janeshwar Singh. Then, Nakkal Singh called Satish Kumar, brother of the injured Janeshwar Singh, from the village. Thereafter,

both the injured were taken to the Police station and then to P.H.C. Rampur. It is also in the evidence of both the eyewitnesses that the accused-appellants caused injuries to the deceased Raj Singh and the injured Janeshwar Singh PW2 by the weapons which they were having in their hands at the time of the incident. Thus their evidence with regard to the incident and participation of the accused-appellants in the commission of the offence is totally credible and cogent.

15. There is no doubt that Janeshwar Singh PW2 is an injured eyewitness as he sustained injuries in the same incident. The presence of the injured eyewitness cannot be doubted at the place of incident. He has narrated the meticulous details of the incident in his evidence. The evidence of Janeshwar Singh PW2 is totally credible and cogent. The defence counsel has cross examined the said witness at length but noting could be elicited from his evidence to discredit his testimony. The evidence of injured eyewitness stands on a higher pedestal than any other witness. The injured witness is most competent witness and his presence at the place of occurrence cannot be ruled out {See **Narendra Nath Khaware Vs. Parasnath Khaware and others 2003 SCC (Crl) 1144 and state of U.P. Vs. Kishan Chand and others 2004 SCC (Cri) 2013}.** Janeshwar Singh PW2, an injured eyewitness being related to the deceased Raj Singh would be last person on earth to adopt the course by which some innocent persons would be convicted in place of really guilty of the murder of the deceased.

16. Learned counsel for the appellants further contended that Janeshwar Singh PW2 is brother of Satish PW1 and both

were related to deceased Raj Singh. Tahar Singh PW3 was also related with the injured Janeshwar Singh PW2. It was further contended that they are interested witnesses as are closely related to the deceased Raj Singh and the injured Janeshwar Singh. Learned G.A. refuted the contention. It is true that Satish Kumar PW1 is the real brother of the injured Janeshwar Singh PW2. Satish Kumar PW1 has admitted in his cross examination that Tahar Singh PW3 is the uncle of Janeshwar Singh PW2. He has further admitted that the deceased Raj Singh was also his distantly related brother. It is now well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased or the injured, if the witness is otherwise found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty can escape nor the innocent is wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and truthful it can be acted upon. If it is found to be improbable or suspicious it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to the material particular before it is accepted. In the instant case, nothing has been elicited in the cross examination of Janeshwar Singh PW2 and Tahar Singh PW3 to discredit their evidence and their evidence stands corroborated from the medical evidence of Dr. Jagbir Singh PW4 and Dr. J.K. Mittal PW5. Thus the evidence of Janeshwar Singh PW2 and Tahar Singh PW3 can not be rejected on the ground that they are closely related to the deceased. The **Apex Court in the case of State of Punjab Vs. Karnail Singh** reported in **2004 SCC (Cri) p/135** has held as under :-

"8. We may also observe that the ground that the witnesses being close relatives and consequently, being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh v. State of Punjab reported in AIR 1953 SC 364 in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J., it was observed: (AIR p. 366, para 25)

> *"25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – Rameshwar v. State of Rajasthan reported in AIR 1952 SC 54 (AIR at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel."*

9. Again in Masalti v. State of U.P. AIR 1965 SC 202 this Court observed: (AIR pp. 209-10, para 14)

> > *"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."*

17. Apart from this, it is a matter of common experience that in the recent times the witnesses other than the relations

are not inclined to depose against the accused or they remain indifferent to give their evidence on the ground that they have no courage to come forward to depose against the accused person. It has now almost become a fashion that the public is reluctant to depose before the court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed a lot. They are being threatened, intimidated and at the top of all they are subjected to unnecessary lengthy cross-examination. So, the witnesses avoid coming to the court. Only the related witnesses dare to come before the Court to depose against the accused persons. The Court while appreciating the evidence cannot loose sight of these realities of life and cannot afford to take an unrealistic approach. Thus we do not find any force in the contention of the learned counsel for the appellants.

18. It was further submitted that the prosecution has not examined the independent witness, i.e. Nakkal Singh. Learned G.A. refuted the contention. Satish Kumar PW1 also admitted that Nakkal Singh is also related with the injured Janeshwar Singh and deceased Raj Singh. The prosecution has also adduced the evidence of Tahar Singh PW3 to corroborate the testimony of the evidence of Janeshwar Singh PW2. The witnesses produced by the prosecution are found credible and cogent. It is not always necessary to multiply the evidence of the incident on the same point. The Court has to see the quality of the evidence produced by the prosecution and not quantity of the evidence. If the prosecution evidence available on record is otherwise credible and cogent, the increase in the number of the witnesses cannot be said to be the requirement of the case. If the

prosecution establishes the guilt of appellants beyond reasonable doubt, there is no need to produce the other witnesses cited in the prosecution list in the case. The witnesses if they are participating in that event their evidence cannot be thrown out-rightly on the ground that the other witnesses have not been produced. We, therefore, do not find any force in the submission of the learned counsel for the appellants.

19. Learned counsel for the appellants further contended that the evidence of Tahar Singh PW3 is not credible and cogent. It was contended that Tahar Singh PW3 is not a natural witness and he was not present at the spot. Learned counsel for the appellants pointed out that there are contradictions in the testimony of Tahar Singh PW3. He further contended that Tahar Singh PW3 has stated in his *cross examination* that the deceased Raj Singh was wearing *Tahmad and dark brown* colour shirt having small *checks* at the time of the incident. But the deceased was wearing different cloth as mentioned in the post mortem report. It was further pointed out that there are other discrepancies in the evidence of Tahar Singh PW3 with regard to taking the injured to P.H.C. Learned G.A. refuted the contention and contended that normal discrepancies are bound to creep in the testimony of truthful, natural and reliable witnesses when they speak about the details. We have gone through the entire evidence and the contradictions pointed out by the learned counsel for the appellants. It is pertinent to mention that there is no contradiction in the evidence of eye witnesses with regard to the incident. Unless the contradictions are of a material dimensions, the same should not be used to jettison the evidence in its entirety. The witnesses are villagers and

they have their own notions about the narration of the facts. The normal discrepancies are bound to creep in the testimony of natural and reliable witnesses. The normal discrepancies in evidence are those which are due to normal errors of observations, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. The discrepancies which have been pointed out by the learned counsel for the accused-appellants in the evidence are the normal errors of memory due to mental disposition due to the death of their nearest relative. Such discrepancies are normal in the truthful depositions. By and large the people cannot accurately recall the sequence of the events which took place in short span and reproduce the sequence of events before the Investigating Officer or the Court. They can only recall the main purport of the incident. It is unrealistic to expect a witness to be a human tape-recorder or video camera. The witnesses cannot be expected to pose a photographic memory and to recall the details of an incident. The witnesses are overtaken by the incident because they could have not anticipated the occurrence which shows after as an element of surprise. In the instant case, the witnesses have narrated the main purport of the incident. A witness is likely to get confused or mixed up when interrogated later on. It cannot be expected from the witness to narrate the incident with mathematical niceties in criminal cases. The contradictions as pointed out by the learned counsel for the accused-appellants are of minor nature and these contradictions and inconsistency did not render the evidence of the prosecution witnesses including eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate otherwise acceptable

evidence. Tahar Singh PW3 has been cross-examined at length but nothing could be elicited from his evidence to discredit his testimony. There is no enmity of the witnesses with accused-appellants and as such he has no reason to depose falsely against the accused-appellants.

20. Satish Kumar PW1 has promptly reported the matter to the police station at 15:10 p.m. on 26.03.1983. The distance between the police station and the place of occurrence is about 9 kms. According to the F.I.R. The prompt FIR thus inspires confidence that it was not the outcome of any consultation or deliberation. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature or an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. The fact that the appellants assaulted the deceased Raj Singh and the injured Janeshwar Singh PW2 further stand corroborated by the prompt FIR in which the name of the appellants have been shown.

21. It was further contended that the F.I.R. as well as the evidence of Janeshwar Singh PW2 categorically reveals that when the injured Janeshwar Singh PW2 and deceased Raj

Singh reached near the field of Mela Singh, the accused-appellants met them and they stopped their *buggi* in which the deceased Raj Singh and injured Janeshwar Singh PW2 were going to the field to collect grass. Immediately after stopping the *buggi,* the accused-appellants asked them that they would teach lesson to the injured Janeshwar Singh PW2 and the deceased Raj Singh because of not permitting them to collect the grass. Learned counsel for the appellants further contended that the accused-appellants have no intention to cause the death of the deceased Raj Singh. It was further contended that there is no evidence that the injuries were caused with the intention to cause the death of the deceased Raj Singh or in an attempt to cause the death of the injured Janeshwar Singh PW2. Learned G.A. refuted the contention.

22. It was further contended that from the facts and circumstances of the case, no offence u/s 302 I.P.C. is made out against accused-appellants and at the most even if the evidence was found credible against them, the offence punishable u/s 304 I.P.C. is only made out against them. It is apparent from the evidence on record that the deceased Raj Singh and the injured Janeshwar Singh PW2 had been preventing time and again the accused-appellants from collecting grass from the fields. In the case in hand, as we have noticed earlier that the accused-appellants were having dangerous weapons like lathies, axe and palkati in their hands. The deceased Raj Singh and Janeshwar Singh PW2 were unarmed. There was no provocation, sudden quarrel or mutual fight. The accuse-appellants dealt blows upon the deceased Raj Singh and injured Janeshwar Singh PW2 with great force causing serious injuries on the vital parts of the

body of the deceased Raj Singh and injured Janeshwar Singh. The head injuries which the deceased sustained in the incident were sufficient in the ordinary course of nature to cause his death.

23. As we have pointed out above that the accused-appellants had a common intention to kill the deceased Raj Singh and injured Janeshwar Singh PW2. Therefore, they assaulted them. The deceased Raj Singh succumbed to his injuries in the hospital later on. Now, we have to consider whether the accused-appellants had an intention to cause the death of the deceased Raj Singh. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. In this case, as we have noticed the accused-appellants were carrying dangerous weapons like lathies, axe and palkati in their hands. The deceased Raj Singh and the injured Janeshwar Singh PW2 were unarmed. There was no provocation, sudden quarrel or

mutual fight. There was no indication of any cause for an apprehension on the part of the accused-appellants that the deceased Raj Singh and the injured Janeshwar Singh might attack them. The accused-appellants caused injuries on the vital parts of the body of the deceased which were sufficient in the ordinary course of nature to cause death. The intention to cause death or at all events intention of causing bodily injury which is sufficient in the ordinary course of nature to cause death was made out. Considering the evidence in the light of the above, we are of the opinion that the case does not fall under section 304 I.P.C. We are of the opinion that the accused/appellants had committed the offence punishable u/s 302 I.P.C. therefore, the trial court has rightly convicted the appellants u/s 302 I.P.C..

24. In the case in hand, the accused-appellants have also been convicted u/s 307/34 I.P.C. It was contended that keeping in view the evidence of the prosecution, the offence could not be said to be one covered u/s 307 I.P.C. but one relatable to Section 324 or Section 326 I .P.C. Learned G.A. refuted the contention. To constitute an offence u/s 307 I.P.C. two ingredients of the offence must be present – (i) an intention of or knowledge relating to commission of murder; and (ii) the doing of an act towards it. Section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of Section 307, there can be no offence ‘of attempt to murder’. Intent which is a state of mind cannot be proved by precise direct

evidence, as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place. On the evidence on record, the prosecution has established that the accused-appellants caused eight injuries on the person of the injured Janeshwar Singh PW2. As per the opinion of the Doctor, the injury No.2 to 8 were caused by blunt object whereas injury No. 1 was caused by sharp edged weapon. Injury No. 8 was kept under observation. It is also in the evidence that the accused-appellants used their weapons indiscriminately causing multiple injuries to injured Janeshwar Singh and the deceased Raj Singh. Thus the evidence of the prosecution constitutes the intention or knowledge of the accused-appellants for committing the murder or doing an act towards it. The accused-appellants had intention to cause the death of the injured Janeshwar Singh PW2 also and they attempted for the same. We do not find any substance in the contention advanced by the learned counsel for the appellants.

25. The injured witness Janeshwar Singh PW2 has stated in his evidence that the accused-appellants had lathies, axe and palkati (Khapali) in their hands and they caused the injuries on the person of the deceased Raj Singh and Janeshwar Singh PW2. The evidence of Tahar Singh PW3 has corroborated the evidence of Janeshwar Singh PW2. According to the doctor, the injuries have been caused by sharp edged weapon or by blunt object like lathi etc. the deceased Raj Singh died due to anti mortem injuries sustained by him on his head. The accused-appellants stopped the *buggi* on which the deceased Raj Singh and

injured Janeshwar Singh PW2 were going to field to collect grass. They challenged the deceased Raj Singh and the injured Janeshwar Singh PW2, and thereafter, they caused the injuries on the person of the deceased Raj Singh and the injured Janeshwar Singh PW2. It is evident from the evidence on record that the accused-appellants had shared the common intention to cause the death of the deceased and attempted to commit the murder of Janeshwar Singh PW2. Section 34 of the I.P.C. recognises the principle of vicarious liability in criminal jurisprudence. It makes a person liable for action of an offence not committed by him but by another person with whom he shared the common intention. It is a rule of evidence and does not create a substantive offence. The section gives statutory recognition to the common sense principle that if two or more persons intentionally do a thing jointly, it is just the same as if each of them had done it individually. There is no gainsaying that a common intention presupposes prior concert, which requires a prearranged plan of the accused participating in an offence. Such preconcert or preplanning may develop on the spot or during the course of commission of the offence but the crucial test is that such plan must precede the act constituting an offence. Common intention can be formed previously or in the course of occurrence and on the spur of the moment. The existence of a common intention is a question of fact in each case to be proved mainly as a matter of inference from the circumstances of the case. The appellants had the deadly weapons in their hand when they stopped the *buggi* of the deceased & Janeshwar Singh PW2. They had challenged the injured and the deceased and they pounced upon the deceased and injured and caused multiple injuries to the deceased Raj Singh and injured Janeshwar Singh PW2. Thus,

they are liable to be punished with aid of 34 I.P.C. The accused-appellants have caused the injuries on the person of the deceased Raj Singh and injured Janeshwar Singh with a common intention to cause their death.

26. In view of the aforesaid reasons, we hold that the prosecution has established the guilt beyond reasonable doubt against the accused-appellants. We find that the learned trial court has rightly convicted and sentenced the accused-appellants and there is no infirmity in the impugned judgment and order passed by the learned trial court in Sessions Trial No. 411 of 1985. The accused-appellants Pooran, Sahu, Jyoti and Dharmraj are liable to be convicted and sentence u/s 302/34 and 307/34 I.P.C. Hence, the appeal is liable to be dismissed and is hereby dismissed.

27. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within three months from the date of receipt of order.

(J.C.S.Rawat, J.) (Rajeev Gupta, C.J.)

Dated 17th May, 2007
Shiv